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IN THE

United States Court of Appeals
For the Second Circuit

No.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*

v.

ESTATE OF LOUIS STERNBERGER, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Executor
Respondent

On Petition for Review of the Decision of the Tax Court of the United States

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APPENDIX TO THE PETITIONER'S BRIEF

[Tr. 1]

Docket No. 31348

ESTATE OF LOUIS STERNBERGER, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Executor,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

APPEARANCES:

For Petitioner: William F. Wolff, Jr., Esq.; Maurice C. Greenbaum, Esq.

For Respondent: Thomas R. Charshee, Esq.; R. C. Whitley, Esq.

Docket Entries

1950

Nov. 13—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 18—Answer filed by General Counsel.

1951

Nov. 15—Hearing had before Judge Black, on merits. Stipulation of facts and exhibits 1 and 2 filed at hearing. Appearance of Maurice C. Greenbaum filed. Briefs due 1/20/52. Replies due 2/10/52.

1952

Jul. 31—Findings of fact and opinion rendered, Black, *Judge*. Decision will be entered under rule 50. Copy served.

Dec. 29—Decision entered, Black, *Judge*, Div. 15.

1953

Mar. 24—Petition for review by U. S. Court of Appeals, Second Circuit, filed by General Counsel.

Mar. 26—Notice of filing petition for review mailed to William F. Wolff, Jr., attorney, filed by General Counsel.

[Tr. 15]

[Caption]

Findings and Opinion of the Tax Court

18 T. C. 836

Docket No. 31348. Promulgated July 31, 1952.

1. A contingent remainder of a trust and the residue of a will went to charity, and a charitable deduction

was claimed on the estate tax return. The will disposes of decedent's residuary estate by providing that the same be held in trust during the joint lives of decedent's wife and his daughter and the life of the survivor of them. Upon the death of the survivor the principal is payable to the descendants then living of the daughter. In the event there are no descendants of the daughter the principal is payable one-half to certain collateral relatives of the decedent then living and one-half to certain charitable organizations. In the event none of the collateral relatives are then living the entire principal is payable to said charitable organizations. *Held*, the contingent remainders to charitable organizations can and have been valued by competent actuarial methods and the Commissioner erred in refusing to allow a deduction under section 812(d) of the Code for the value of these contingent remainders to charity.

[Tr. 16]

William F. Wolff, Jr., Esq., and *Maurice C. Greenbaum, Esq.*, for the petitioner.

Thomas R. Charshee, Esq., for the respondent.

The respondent has determined a deficiency in estate tax against the Estate of Louis Sternberger of $195,035.65. The deficiency is due to several adjustments made by the Commissioner to the estate tax return filed by the estate. Only one of these adjustments is contested. The contested adjustment is the disallowance by the Commissioner of $179,154.19, claimed as charitable bequests explained in respondent's deficiency notice as follows:

Charitable, etc., Gifts and Bequests:	*Returned*	*Determined*
Items 2 to 5 inclusive	$179,154.19	$0.00

Items 2, 3, 4 and 5 claimed as deductions under Schedule N, are disallowed in full since their actual present value cannot be determined by any known data.

The petitioner assigned error as to the foregoing adjustment. It also assigned as error the failure to allow deductions not claimed on the return. Petitioner's two assignments of error still pressed are as follows:

(a) The Commissioner has erroneously disallowed a deduction for Charitable, Public and Similar Gifts and Bequests in the amount of $179,154.19.

[Tr. 17]

Findings of Fact.

Some of the facts have been stipulated and are found accordingly and the stipulation of facts is incorporated herein by reference.

The petitioner is the executor of the last will and testament of Louis Sternberger, deceased. The decedent Louis Sternberger died June 25, 1947, a resident of Scarsdale, New York. The Federal estate tax return was filed on September 24, 1948, with the collector of internal revenue for the 14th district of New York disclosing a gross estate of $2,406,541.71, a net estate for purpose of the basic estate tax of $2,024,346.55 and a net taxable estate for purpose of additional estate tax of $2,064,346.55.

Issue 1.

The gross estate of the decedent for Federal estate tax purposes consisted of certain assets which he owned at the date of his death and certain other assets held in a revocable trust of which the decedent was the settlor

and primary life beneficiary. The revocable trust was created on January 20, 1931, and was amended from time to time by the decedent.

The last will and testament of the decedent is dated July 24, 1944, and the codicil thereto is dated October 20, 1945.

Paragraph FIRST of the codicil to decedent's last will and testament disposes of decedent's residuary estate by providing that the same be held in trust during the joint lives of decedent's wife, Eunice E. Sternberger, and decedent's daughter, Eunice P. Sternberger, and the life of the survivor of them. Upon the death of the survivor the principal is payable:

> to the descendants then living of said Eunice P. Sternberger in equal shares, *per stirpes*.

In the event there are no descendants of the decedent's daughter, Eunice P. Sternberger, surviving the decedent's widow and daughter, the principal is pay-

[Tr. 18]

able, one-half to certain collateral relatives of the decedent then living, and one-half to certain charitable organizations. In the event none of the collateral relatives are then living the entire principal is payable to said charitable organizations.

The dispositive provisions of the *inter vivos* trust, effective at the date of the decedent's death, are (after a specific bequest of $5,000) in all respects identical with the dispositive provisions of the residuary clause of decedent's last will and testament.

In the Federal estate tax return of the decedent a charitable deduction was claimed in the amount of $180,154.19, of which $1,000 represented an outright bequest to the Seamen's Church Institute of New York. The sum of $179,154.19 represented the alleged value

of the contingent charitable remainders provided for in decedent's last will and testament, and in the *inter vivos* trust of January 20, 1931.

The decedent's wife, Eunice E. Sternberger, survived the decedent and was sixty-two years of age at the date of decedent's death. She has always resided in the United States.

The decedent's daughter, Eunice P. Sternberger, survived the decedent and was twenty-seven years of age at the date of decedent's death. She had been previously married, which marriage terminated in divorce on March 31, 1944. At the date of decedent's death she was then unmarried and had had no children. Said daughter is a white female and has always resided in the United States.

The probability of a divorcee remarrying may be measured by established and accepted actuarial principles based upon known and reliable data.

The probability of a white female, age 27, having children may be measured by established and accepted actuarial principles based upon known and reliable data.

[Tr. 19]

The value of a remainder interest contingent upon a person dying without issue may be measured by established and accepted actuarial principles based upon known and reliable data.

The computation of the value of the charitable remainders provided for by decedent's last will and testament, and the *inter vivos* trust of January 20, 1931, was prepared by a recognized firm of actuaries in accordance with established actuarial principles based upon known and reliable data.

In making the computation of the present value of the charitable remainders it was assumed that if the decedent's daughter, Eunice P. Sternberger, married and

became the mother of a child, the child would survive her.

In making the computation of the present value of the charitable remainders it was assumed that there would be someone in the group of collateral relatives who would be living at the date of death of decedent's wife and daughter so that not more than 50 per cent of the principal of the residuary trusts would pass to the named charitable organizations.

The computation of the present value of the charitable remainders by petitioner's actuaries was based upon the following factors:

(a) Joint life expectancy of the decedent's wife and daughter, as determined by the Combined Experience Mortality Table prescribed in Section 81.10 of the Estate Tax Regulations promulgated by the Commissioner of Internal Revenue.

(b) The probability of the remarriage of decedent's daughter, Eunice P. Sternberger, as determined from the American Remarriage Table, published by the Casualty Actuary Society, Volume 19, pages 279-394—which table is accepted as valid for estate tax purposes by the United States Treasury Department.

(c) The probability of a child being born to decedent's daughter, Eunice P. Sternberger, as determined from a table prepared in accordance with accepted actuarial principles based upon known and reliable data derived from the Vital Statistics of the United States, 1940, published by the Bureau of the Census.

[Tr. 20]

The experience data from which the probability of issue being born to decedent's daughter Eunice P.

Sternberger was computed, were compiled by the United States Bureau of the Census in connection with the 1940 Federal Census.

At the date of death of the decedent the present value of the charitable remainders provided in decedent's last will and testament and in the *inter vivos* trust of January 20, 1931, based on legitimate descendants only was $.24094 per dollar of trust corpus.

At the date of death of decedent the present value of the charitable remainders provided in decedent's last will and testament and in the *inter vivos* trust of January 20, 1931, based upon the same actuarial computations and data used in arriving at the values set forth above, except that the term "descendants" was deemed to include illegitimates, was $.24058 per dollar of trust corpus.

The present value of the charitable remainders at the date of death of decedent, assuming that the remarriage of decedent's daughter alone would defeat the charitable remainders, is $.18384 per dollar of trust corpus.

The computation of the present value of the charitable remainders on the assumption stated just above is based upon the same use of the Combined Experience Mortality Table and the American Remarriage Table, without referring to the probability of issue. This computation assumes that if decedent's daughter remarried, the probability of issue would be 100 per cent.

* * * * * * * * *

[Tr. 22]

OPINION

BLACK, *Judge:* There are two isues in this proceeding involving the estate tax. The major question concerns whether a contingent remainder to charity is deductible under section 812(d) of the Code and, if so, the amount of the deduction. * * *

Issue 1.

The applicable statute to Issue 1 is printed in the margin.[1] In the instant case there is no issue between the parties that the charities to which the contingent bequests were made are of the class named in section 812(d) of the Code. The only reason that respondent has denied the deduction which petitioner claims for these contingent charitable bequests is that he contends that the present value of decedent's contingent bequests to charity is too speculative and tenuous to be deductible. In support of this contention,

[Tr. 23]

respondent relies upon the Supreme Court's decisions in *Humes* v. *United States*, 276 U. S. 487, and *Robinette* v. *Helvering*, 318 U. S. 184.

Petitioner, on the other hand, contends that it has made clear and convincing proof that actuarial computations can and have been made of the present value of these contingent bequests to charity. Petitioner further

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[1] INTERNAL REVENUE CODE.

SEC. 812. NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * * * *

(d) Transfers for Public, Charitable, and Religious Uses.—The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made prior to the date prescribed for the filing of the estate tax return or, in the case of a decedent dying on or before October 21, 1942, if the disclaimer is made prior to September 1, 1944), to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, * * *

contends that such actuarial computations having been made, *Estate of Pompeo M. Maresi*, 6 T. C. 582, affd. 156 F. 2d 929, is applicable and sustains petitioner. Petitioner points out that in the *Maresi* case, both the Tax Court and the Second Circuit distinguished *Humes* v. *United States* and *Robinette* v. *Helvering*, both *supra*, upon which respondent relies, and petitioner contends that substantially the same distinction as existed in the *Maresi* case exists here. We agree with petitioner.

Petitioner presented reliable and conservative actuarial testimony to estimate the value of the contingent remainder to charity at the date of decedent's death to support his deduction of $179,154.19. We do not feel that we are at liberty to disregard this testimony of competent actuaries who have made their computations in accordance with what appear to be well recognized actuarial methods.

In *Estate of Pompeo M. Maresi, supra*, we held that the commuted value of the liability of decedent's estate for payments to decedent's wife until she should die or remarry were deductible from decedent's gross estate in an amount determinable by reference to American Experience Tables reflecting life expectancy and the probability of the remarriage of widows. In that case, among other things, we said:

[Tr. 24]

> And, of course, it can not be said here as in the *Robinette* case that petitioner has referred us to no method for determining the value of the interest in question. Although it is true that a marriage table was offered in the *Humes* case, it appeared to relate solely to experience among women in the Scotch peerage, while the table proffered here is based upon American statistics.

Following the principle which we announced in the *Maresi* case, *supra*, and which was affirmed by the Second Circuit, we hold in petitioner's favor on Issue 1.

In the first computation made by petitioner's actuary he determined that the present value of the charitable remainder under the will of the decedent at date of death was $.24094 per dollar represented in the one-half of the estate which may go to charity. In a supplemental valuation based upon the effect upon the remainder value of the contingency of illegitimate issue the actuary reaches a slightly lower figure. In this supplemental computation the actuary reaches the conclusion that the net result is that the increased probability of issue reduces the value per dollar of remainder to charity from $.24094 to $.24058. This supplemental actuarial computation concludes with this statement: "It is our opinion that the figure of $.24058 does make full provision for the probability of issue, whether or not legitimate." In a recomputation under Rule 50 of the deduction for charitable bequests this figure of $.24058 should be used instead of the figure $.24094.

* * * * * * * * *

[Tr. 25]

Decision will be entered under Rule 50.

[Tr. 26]

[Caption]

Decision

On July 31, 1952, Findings of Fact and Opinion were promulgated in this proceeding. At the conclusion of the opinion it was stated "Decision will be entered under Rule 50." On November 5, 1952, respondent filed his computation for entry of decision. On November 28, 1952, petitioner filed its computation for

entry of decision. These computations differed and were set for hearing in Washington, D. C., December 3, 1952. On that date both pa ties appeared and were heard in support of their respective computations. Their arguments have been fully considered.

Premises considered, it is believed the following decision should be entered:

ORDERED and DECIDED, that there is an overpayment in the estate tax of petitioner in the amount of $91,539.02, of which $24,798.25 was paid within three years before the mailing of the notice of deficiency, which notice was mailed within three years from the filing of the return, and $66,740.77 was paid after the mailing of the notice of deficiency.

(Signed) EUGENE BLACK
Judge

Entered Dec. 29, 1952.

[Seal of the Tax Court]

[Tr. 27]

[Caption]

Stipulation of Facts

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that the following facts shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true:

1. The petitioner is the Executor of the Last Will and Testament of Louis Sternberger, deceased.

2. The decedent Louis Sternberger died June 25, 1947, a resident of Scarsdale, New York.

3. The Federal estate tax return was filed on September 24, 1948, with the Collector of Internal Revenue for

the 14th District of New York, disclosing a gross estate of $2,406,541.71, a net taxable estate for purposes of the basic estate tax of $2,024,346.55, and a net taxable estate for purposes of the additional estate tax of $2,064,346.55.

4. Decedent owned improved realty known as 2 Oak Lane, Scarsdale, New York, which property was included in the Federal estate tax return at a valuation of $65,000.00. The said realty had a fair market value on the optional valuation date, June 25, 1948, of $55,000.00.

[Tr. 28]

5. The gross estate of the decedent for Federal estate tax purposes consisted of certain assets which he owned at the date of his death and certain other assets held in a revocable trust of which the decedent was the settlor and primary life beneficiary. The revocable trust was created on January 20, 1931, and was amended from time to time by the decedent. The provisions of said trust effective at the death of the decedent are set forth in Exhibit "1" hereto annexed.

6. A copy of the Last Will and Testament of the decedent, dated July 24, 1944, and the codicil thereto, dated October 20, 1945, are annexed hereto as Exhibit "2".

7. In the Federal estate tax return of the decedent a deduction was claimed under section 812(d) of the Internal Revenue Code, in the amount of $180,154.19, of which $1,000.00 represented an outright bequest to Seamen's Church Institute of America. The sum of $179,154.19 represented the alleged value of the contingent charitable remainders referred to in Exhibits "1" and "2".

8. The decedent's wife, Eunice E. Sternberger, survived the decedent and was sixty-two years of age at the date of decedent's death. She has always resided in the United States.

9. The decedent's daughter, Eunice P. Sternberger, survived the decedent, and was twenty-seven years of age at the date of decedent's death. She had been previously married, which marriage terminated in divorce on March 31, 1944. At the date of decedent's death she was then unmarried and had had no children. Said daughter is a white female and has always resided in the United States.

10. The deduction for the amount of additional legal

[Tr. 29]

fees paid or to be paid to Messrs. Greenbaum, Wolff & Ernst by the petitioner for legal services rendered and disbursements shall be determined under Rule 50 of the Rules of Practice of The Tax Court.

11. The New York estate tax return of the decedent was filed with the New York State Tax Commission in Albany, New York, on October 28, 1948, and no final order has been entered in said proceeding. The following New York estate taxes have been paid to the State of New York in respect of property included in the gross estate of the decedent:

December 10, 1947	$154,137.50
February 3, 1948	1,920.00
Total	$156,057.50

[Signatures omitted]

[Tr. 30]

Exhibit 1 Attached to Stipulation

Two Oak Lane
Scarsdale, New York
October 20, 1945

The Chase National Bank of the City of New York
as Trustee under Trust Indenture dated
January 20, 1931, as amended, made by
Louis Sternberger
Eleven Broad Street
New York 15, New York

Gentlemen:

In accordance with the right reserved to the Grantor to revoke, modify or amend the above Trust Indenture, I, the Grantor, do hereby exercise such power as follows:

1. I do hereby revoke in its entirety paragraph "FIRST" of the said Trust Indenture as heretofore amended, and, in lieu thereof, I hereby substitute the following:

"FIRST: The Trustee shall hold the Trust Estate during the life of the Grantor, in trust, to collect the income therefrom and to pay the same to him in monthly payments during his life.

"Upon his death, the Trustee shall transfer and pay over the sum of Five Thousand Dollars ($5,000), free of estate and inheritance taxes or other charges to VINCENT L. BANKER, if he survives the Grantor, as a token of the Grantor's friendship and appreciation of the interest the said VINCENT L. BANKER has taken in the Grantor's affairs during his lifetime, and shall continue to hold the balance of the Trust Estate in trust during the period of the joint lives of the Grantor's wife EUNICE E. STERNBERGER and the Grantor's daugh-

ter EUNICE P. STERNBERGER and the life of the survivor of them, and shall keep the same invested and perform the following acts and things:

First: as to Income: The Trustee shall collect the income therefrom and shall pay the net annual income as follows:

a) The Trustee shall pay to the Grantor's wife EUNICE E. STERNBERGER fifty per cent (50%) of such net income during the life of our daughter EUNICE P. STERNBERGER and in the event of the demise of our daughter EUNICE P. STERNBERGER thereafter such sums as hereinafter provided. Said income will be paid during said EUNICE E. STERNBERGER's life in monthly installments.

b) The Trustee shall pay to the Grantor's daughter EUNICE P. STERNBERGER the remaining fifty per cent (50%) of such net income in monthly installments during the life of the grantor's wife EUNICE E. STERNBERGER and in the event of the demise of the said Grantor's wife, shall pay to said EUNICE P. STERNBERGER the entire net income of the trust in monthly installments during her life.

[Tr. 31]

c) If the Grantor's daughter EUNICE P. STERNBERGER shall die before EUNICE E. STERNBERGER, then the Trustee shall pay the entire net income of the trust as follows:

1. Sixty percent (60%) thereof to EUNICE E. STERNBERGER during her life.

2. Forty percent (40%) thereof to EUNICE P. STERNBERGER's descendants in equal shares per stirpes as that class may from time to time be constituted, and at such time as no person in such class shall then survive then

to pay said income to my niece BLANCHE R. WOLFF and my grandnephews WILLIAM F. WOLFF, JR. and JAMES A. WOLFF or such of them as may be surviving for the time being in equal shares except that if either WILLIAM F. WOLFF, JR. or JAMES A. WOLFF shall die his descendants as the class may from time to time be constituted shall receive the income said WILLIAM F. WOLFF, JR. or JAMES A. WOLFF would have been entitled to, if living, in equal shares per stirpes. At such time as there be none of said persons surviving, the trustee shall pay such income to the charities entitled to receive income under the following paragraph numbered "Second"

SECOND: *as to Principal:* Upon the death of the survivor of EUNICE E. STERNBERGER, EUNICE P. STERNBERGER and the Grantor, the Trustee shall transfer, assign and set over the net principal of the Trust as the same shall then consist to the descendants then living of said EUNICE P. STERNBERGER in equal shares *per stirpes*, and if there be no such descendants living upon the death of the survivor of the Grantor, his said wife and daughter, then the Trustee shall transfer, assign and set over one half (½) the net principal of the trust to BLANCHE R. WOLFF, WILLIAM F. WOLFF, JR., and JAMES A. WOLFF or such of them as may be then surviving in equal shares except that if either JAMES A. WOLFF or WILLIAM F. WOLFF, JR. is then deceased his descendants shall receive the share said JAMES A. WOLFF or WILLIAM F. WOLFF, JR. would have been entitled to, if living, in equal shares per stirpes; and said Trustee shall continue to hold the other one half (½) of the net principal of trust or the whole of said principal if none of the person's above mentioned shall then survive, in trust and shall pay over the net annual income thereof in perpetuity as follows:

a) One-quarter (1/4) thereof to NATIONAL JEWISH HOSPITAL AT DENVER.

b) One-quarter (1/4) thereof to FEDERATION FOR THE SUPPORT OF JEWISH PHILANTHROPIC SOCIETIES OF NEW YORK CITY.

c) One-quarter (1/4) thereof to THE PRESBYTERIAN HOSPITAL IN THE CITY OF NEW YORK.

d) One-quarter (1/4) thereof to one or more organizations for the welfare and betterment of the Negro race selected by the Trustee;

provided that if any of the foregoing organizations shall have ceased to exist, or if an organization named in (c) or (d) shall cease to be nonsectarian (determined as provided below) in the conduct of its affairs, the

[Tr. 32]

Trustee, shall pay over the share of income to which such organization would otherwise have been entitled to a generally similar nonsectarian charity selected by it. The Trustee for the purpose of determining nonsectarianism under this paragraph shall be entitled to rely upon an affidavit affirming the fact thereof made by an officer of the organization in question, unless affirmative evidence of sectarianism shall be brought to its attention, in which event it may request instructions of any court having jurisdiction."

2. In all other respects I do hereby confirm the said Trust Indenture of January 20, 1931, and the amendments thereto heretofore made and not heretofore or herein revoked or modified.

3. The right is fully reserved to the Grantor further to revoke, modify or amend the Trust Indenture of January 20, 1931, at any time by filing a written instrument with the Trustee.

Will you kindly acknowledge the receipt and acceptance of this amendment by signing and returning the enclosed carbon copy of this letter.

Very truly yours,

LOUIS STERNBERGER
Louis Sternberger

WITNESS:
LOUIS KARSCH

ACCEPTED: October 20, 1945
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Trustee
By [Signature illegible]
2nd Vice President

[The following documents, which, together with the foregoing letter, constitute the taxpayer's Exhibit 1, are not printed here, namely, (1) the trust indenture dated January 20, 1931, referred to in said letter, and (2) various and sundry other letters of Louis Sternberger antedating said letter, which gave instructions to the bank regarding said trust indenture.]

[Tr. 63]

[Exhibit 2 Attached to Stipulation]

I, LOUIS STERNBERGER, residing at Scarsdale, New York, do hereby make, publish and declare the following as and for my Last Will and Testament:

* * * * * * * * *

[Tr. 65]

SEVENTH: I give, devise and bequeath all the rest, residue and remainder of my estate, real, personal and mixed, of whatever kind and nature and wherever situated, of which I shall die seized or possessed or over which I shall have any power of disposition or appoint-

ment, or in which I shall have any interest, to my Trustee to hold the same in trust during the period of the joint lives of my wife EUNICE E. STERNBERGER and our daughter EUNICE P. STERNBERGER and the life of the survivor of them, to keep the same invested and to do

[Tr. 66]

and perform the following acts and things:

First: as to Income: To collect the income therefrom and after paying all proper charges to pay the net annual income as follows:

a) To pay to my wife EUNICE E. STERNBERGER fifty per cent (50%) of such net income during her life, in monthly installments;

b) To pay to our daughter EUNICE P. STERNBERGER the remaining fifty per cent (50%) of such net income in monthly installments during the life of my wife EUNICE E. STERNBERGER, and after the death of my said wife to pay to our daughter EUNICE P. STERNBERGER the entire net income of the trust in monthly installments so long as she shall survive, or if our daughter EUNICE P. STERNBERGER shall die before EUNICE E. STERNBERGER, then to pay all of the income to which my daughter would have been entitled hereunder, if living, to her descendants in equal shares *per stirpes* as that class may from time to time be constituted, or, if no person in such class shall then survive, to pay over such income to the charities entitled to receive income under the following paragraph.

Second: as to Principal: Upon the death of the survivor of EUNICE E. STERNBERGER and EUNICE P. STERNBERGER, to transfer, assign and set over the net

principal of the trust as the same shall then consist to the decendants then living of said EUNICE P. STERNBERGER in equal shares *per stirpes*, and if there be no such descendant living upon the death of the survivor of my said wife and daughter, then I direct my Trustee to continue to hold the corpus in trust and to pay over the net annual income thereof as follows:

a) One-quarter (1/4) thereof to NATIONAL JEWISH HOSPITAL AT DENVER.

b) One-quarter (1/4) thereof to FEDERATION FOR THE SUPPORT OF JEWISH PHILANTHROPIC SOCIETIES OF NEW YORK CITY.

c) One-sixth (1/6) thereof to THE PRESBYTERIAN HOSPITAL IN THE CITY OF NEW YORK.

d) One-sixth (1/6) thereof to SYDENHAM HOSPITAL, INC.

e) One-sixth (1/6) thereof to one or more organizations for the welfare and betterment of the Negro race selected by the Trustee.

Provided that if any of the foregoing organizations shall have ceased to exist, or if an organization named in (c), (d) or (e) shall cease to be nonsectarian (determined as provided below) in the conduct of its affairs, the Trustee shall pay over the share of income to which such organization would otherwise have been entitled to a generally similar nonsectarian charity selected by it. The Trustee for the purpose of determining nonsectarianism under this paragraph shall be entitled to rely upon an affidavit affirming the fact thereof made by an officer of the organization in question, unless affirmative evidence of sectarianism shall be brought to its attention, in which event it may request instructions of any court having jurisdiction.

[Tr. 67]

IN WITNESS WHEREOF, I have signed and sealed this will this 24th day of July, 1944.

LOUIS STERNBERGER

[Duly witnessed]

[Tr. 71]

Official Report of Proceedings Before the Tax Court of the United States

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[Caption]

Hearing at New York, N. Y.
Date: November 15, 1951.

* * * * * * * * *

[Tr. 80]

THE COURT: The stipulation of facts and the exhibits attached thereto are received in evidence.

* * * * * * * * *

Whereupon,

David Silverman

[called on behalf of the taxpayer] testified as follows:

[Tr. 81]

Direct Examination

By Mr. Greenbaum:

Q. Please state your name and occupation. A. David Silverman. I am a consulting actuary.

Q. Would you please state your place of business and the firm with which you are affiliated? A. I am a member of the firm of Wolfe, Corcoran & Linder, at 116 John Street, New York.

Q. Would you please state your educational and professional background for the Court, please, Mr. Silverman? A. I am a graduate of McGill University in Canada. I took the business and actuarial courses there. I entered into actuarial work in 1927.

I was admitted to fellowship in the Casualty Actuarial Society in 1931. Practiced as a consulting actuary ever since 1927. My present association with Wolfe, Corcoran & Lander commenced in 1934 as an associate actuary, and I was admitted to membership in the firm in 1945.

Q. In your professional experience, Mr. Silverman, have you ever been called upon by any private or governmental agencies to prepare actuarial tables in connection with various types of probabilities dealing with vital statistics? A. Yes, we have. The firm has and I have personally.

Q. Were you asked to prepare an actuarial compu-

[Tr. 82]

tation dealing with the following three contingencies: mortality, probability of remarriage, and probability of issue, by the firm of Greenbaum, Wolff & Ernst? A. Yes, sir.

* * * * * * * * *

Q. Were you asked to render your opinion whether a computation dealing with those contingencies was feasible from the standpoint of established and recognized actuarial principles? A. Yes, sir.

Q. I hand you this paper. Would you please identify it? A. This is a letter I wrote to the firm of Greenbaum, Wolff & Ernst in September, 1948. It sets forth briefly the problem presented in this case, the method by which we made these particular computations, and the result of the computations in terms of the contingent value of the charitable remainder.

Q. Would you please state the precise problem that you worked upon in connection with this letter? A. The problem was to determine the value of the remainder to charity upon the second death of the two women, one age 27, the other age 62, provided that the younger

[Tr. 83]

woman die without issue. As of the date of our valuation she was unmarried but had previously been divorced. We therefore had four contingencies to consider, three aside from the interest rate: death, remarriage, and the probability of having issue; and we determined the basis for each of these four factors and proceeded with the computation.

The contingencies with respect to death and interest are described in the regulations. We did use the Combined Experience Table of Mortality and four percent interest. And with respect to the other contingencies —remarriage and the probability of issue—we made certain studies and computations to determine what we consider the most reliable and proper basis for a computation.

* * * * * * * * *

[Tr. 84]

Q. Mr. Silverman, in connection with the probability of remarriage, would you please state what tables you used in that connection? A. We used a table called the American Remarriage Table. That in our opinion was the best source and most reliable table for use in connection with this problem. The table had been prepared very recently. It was published in 1933. It was a result of a study made by a committee of the Casualty Actuarial Society. The study thoroughly covered the remarriage of widows under workmen's compensation cases, and the value was quite substantial. It was

an extensive study and considered quite reliable by the Casualty Actuarial Society.

Q. Were these computations referred to in this let-

[Tr. 85]

ter prepared under your personal supervison? A. Yes, they were.

Q. In connection with the third contingency you spoke of, the probability of issue, would you please explain the basic data that was used in that connection? A. The basic data was the statistics published by the Bureau of the Census of the Population Division by the Government. The statistics taken in the study all related to the 1940 census. That is, we had tables by race, sex, and age, and similar data with respect to that, and also reported the number of births in the United States by order of birth and certain supplemental data; and using such statistics as a base I compiled a table showing the probability of a married woman becoming a mother.

Q. The basic experience record from which you derived your table that you used in this connection was from what primary source? A. From the published reports of the Bureau of the Census. There are several volumes of books and we searched for those which would give this information.

Q. The tables published by the Bureau of the Census with respect to the 1940 census, do they contain data with respect to all women in the United States? A. Yes.

Q. So that your experience record from which you derived your probability of issue in this instance was

[Tr. 86]

based upon the experience record of all women in the United States in the year 1940? A. That is correct.

Q. After making these computations did you arrive at a percentage figure representing the value of these contingent remainders with respect to one-half of the estate? A. Yes, sir.

Q. And what was the valuation that you determined under the circumstances you have set forth? A. For each one dollar of corpus represented in half the estate, that is for each dollar which charity might take the present value was 24.094 cents. That is about 24 per cent.

Q. Were you also requested to make a computation based purely on the first two contingencies, mortality and the probability of remarriage, without taking into account the probability of issue in this connection? A. Yes, I was. Although it was not exactly in that manner.

Q. Would you please explain what computations you were requested to make? A. We were asked to make such a computation, and we did it in a manner which assumed that every woman who married would have issue, provided she married before age 55, and that if she married after age 55 issue would not result, would not result, so that in effect it is contingent upon remar-

[Tr. 87]

riage alone provided the remarriage occurs prior to age 55.

Q. From an actuarial standpoint what is the probability of a woman having issue after age 54? A. According to the statistics published by the census it is zero. We have the data covering about 2,000,000 births in the year 1940 according to the age of mother, and there are none reported where the mother was over 54 years of age.

Q. I hand you this document. Would you please identify it? A. Yes. That is a letter which I sent to the firm of Greenbaum, Wolff & Ernst setting forth the

result of this second calculation which represented the present value of the contingent remainder assuming issue would result in the case of every marriage which occurred prior to the age of 55. The remainder value in that case per dollar of corpus was 18.384 cents.

Q. In connection with the Combined Experience Mortality Table adopted by the Commissioner of Internal Revenue, what is the hypothetical basis on which that table is established? A. Well, the table shows certain mortality rates which were derived from an old study, and these mortality rates were applied to a hypothetical group of 100,000 people, 100,000 children at age 10, and then it shows the progression of the death of survivors during their lifetime.

Q. According to that table what would be the num-

[Tr. 88]

ber of survivors, female, age 27 from this hypothetical group of 100,000 at age 10? A. The Combined Experience Table does not distinguish between sexes. Of the 100,000 persons living at age 10 there would be surviving 88,434 at age 27.

Q. Mr. Silverman, have you prepared a memorandum explaining the basis for your computations and showing the tables and statistics which you used in making your computations you have just referred to? A. Yes, sir.

Q. In your memorandum have you taken as your starting point 88,434 unmarried women at age 27 as determined under the Combined Experience Mortality Table? A. Yes, sir.

Q. Would you please explain to the Court how you derived your final figure from that starting point as set forth in your memorandum? A. Well, the problem basically was to make use of the Combined Experience Table and not to depart from it so far as mortality is

concerned and, in effect, to break up the number of people surviving into three parts, being careful to reserve the total.

The tables which I prepared personally showed a progress of unmarried women starting with this figure of 88,434 at age 27, the progress of those unmarried,

[Tr. 89]

those married childless, and those married who had become mothers; so that the sum of the three parts equalled the total as represented by the Combined Experience Mortality Table.

Q. Will you please explain then how you interjected the probability of issue into these computations? A. The probability of issue which was derived from these tables was applied to the number of married women. It represents a percentage of a proportion that will become mothers during each year of life, and by applying that probability of issue to the number of married women exposed we did derive the number that would become mothers. As I said, we traced that group through their lifetime.

MR. GREENBAUM: At this time I would like to offer in evidence as Petitioner's Exhibit No. 3, the letter of September 20, 1948, from the witness to the firm of Greenbaum, Wolff & Ernst.

THE COURT: That is the one, I understand, on which he made the computation on which you rely in this case.

MR. GREENBAUM: That is correct.

MR. CHARSHEE: No objection. May I have a copy?

MR. GREENBAUM: Yes, you may have a copy of that. Together with the three tables attached to the letter.

THE COURT: All right. Received as Petitioner's Exhibit No. 3.

(Petitioner's Exhibit No. 3. was received in evidence.)

[Tr. 90]

MR. GREENBAUM: Petitioner offers in evidence the letter of January 27, 1950, from the petitioner to Greenbaum, Wolff & Ernst, as Petitioner's Exhibit 4.

MR. CHARSHEE: What is this?

MR. GREENBAUM: This is the second letter, which you also have.

THE COURT: That makes a different computation, as I understand.

MR. GREENBAUM: This letter makes a computation solely on the probability of remarriage, assuming that if the daughter would remarry before age 55 she would have issue.

THE COURT: So I understood.

MR. GREENBAUM: Together with the table attached.

THE COURT: Received as Petitioner's Exhibit 4.

(Petitioner's Exhibit No. 4 was received in evidence.)

MR. GREENBAUM: Petitoner offers in evidence the memorandum of November 13, 1951, prepared by David Silverman in explanation of the actuarial tables used in computations for the Estate of Louis Sternberger.

MR. CHARSHEE: No objection.

THE COURT: Be received as Petitioner's Exhibit 5.

(Petitioner's Exhibit No. 5 was received in evidence.)

By Mr. Greenbaum:

[Tr. 91]

Q. Mr. Silverman, were you also requested to make a computation adjusting your original valuation, taking into account that the daughter at age 27 would have or might have illegitimate issue as well as lawful issue? A. Yes.

Q. I hand you this paper. Would you please identify it? A. This is a letter written by me to the firm of Greenbaum, Wolff & Ernst, at a later date which discusses the effect of illegitimate issue on this problem. The fact that in our first computation it had not been completed covered or taken care of and setting forth the adjusted result after making an adjustment for illegitimate issue to the extent that it had not been previously considered.

Q. In your original computation had there been any provision in your computations that related to illegitimate issue? A. Well, not specificaly. I did not consider the problem at all originaly. But by using the Census Reports showing the number of children born, that would automatically include illegitimate children. There were no distinctions made as to the number of children born in the United States, so that they were used in deriving the probability that a woman would become a mother, and it automatically was reflected in our first computation as being in the rate.

Q. After makiag the adjustment in the computation

[Tr. 92]

referred to in your letter of November 1, 1949, what was the valuation that you then determined? A. For each dollar of corpus which might go to charity, 24.058 cents.

MR. GREENBAUM: The petitioner offers in evidence the letter from the witness to Greenbaum, Wolff & Ernst dated November 1, 1949, as Petitioner's Exhibit 6.

MR. CHARSHEE: No objection.

THE COURT: It will be received as Petitioner's Exhibit No. 6.

(Petitioner's Exhibit No. 6 was received in evidence.)

By Mr. Greenbaum:

Q. Mr. Silverman, when you originally started to make the computations that were requested of you, did you know of any tables dealing with the probability of issue in the United States? A. No. None that would have been appropriate for this purpose.

Q. Do you know, were there any tables dealing with the probability of remarriage with respect to the United States experience? A. Yes. Yes, there was.

Q. That was the American Remarriage Table that

[Tr. 93]

you used as a basis for your computations? A. Yes, sir.

Q. Are there any other remarriage tables with respect to the United States experience, to the best of your own knowledge? A. Not that I know.

Mr. Greenbaum: No further questions.

The Court: Would you like to recess for 10 or 15 minutes to read the documents?

Mr. Charshee: No, your Honor, I would not. If your Honor would like to recess—

The Court: No. I usually recess along about eleven o'clock, we will say.

Mr. Charshee: Very well. I will be through in a few minutes.

Cross-Examination

By Mr. Charshee:

Q. I just wanted to explore the question of whether or not a woman of 27 will ever have a child.

It is my understanding, or you just made the statement that there does not exist any table covering that point. A. That is right.

Q. You prepared the table as I understand it from data obtained from the Census Bureau? A. Obtained from the published reports of the Census Bureau.

[Tr. 94]

Q. What was the nature of that Census Bureau data? A. There were several tables, but it was in effect the statistics with reference to the United States in 1940. The data represented factual data, so many people.

Q. On what? On what? A. I don't understand.

Q. Factual data on what? A. With respect to the number of people living, dying, the number of births in the country, and various studies as to—

Q. As I understand it, this table just merely states the number of births in the United States during a certain period of time? A. It is more extensive than that. For example, there might be one table showing the number of women in the country by age, whether married or unmarried, a second table showing the number of married women by race, age.

Q. What was the table with respect to women having babies after 27 years of age? A. There was no such table in that form, but there were statistics showing the number of married women in the country by age and other tables showing those which had families and those which were childless.

Q. I see. A. And still further tables showing the

[Tr. 95]

number of children born in the United States and whether they were first births or showing the order of births.

Q. As I understand it, this is the first table that you have ever prepared of this character? A. That is correct, with respect—

Q. You know of no recognized table in the United States dealing with that subject? A. Not one that would be appropriate for this problem.

Q. Do you know of any legal proceeding in which the table as you prepared has ever been used? A. Well, by legal proceeding, are you thinking of tax cases or—

Q. I am thinking of any case. Of course your answer automaticaly would be no because you just made the statement it was the first table which you ever prepared and you also made the statement you did not know of any other table. So— A. I do not know.

Q. Therefore, you do not know of any legal proceeding in which such a table was used? A. I don't know of any other table that would have any recognition. But the insurance companies probably many times have made certain supplementary studies for their own use. It is likely that the large insurance compaines, every one of them, may have considered this problem.

[Tr. 96]

* * * * * * * * *

Mr Charshee: That is all.

Redirect Examination

By Mr. Greenbaum:

Q. Mr. Silverman, if you were given an experience record dealing with the number of deaths within a given life group and if you were given all of the other data that are customarily used in establishing a mortality table, from that data even though you did not have an earlier existing table, could you then determine the life expectancy of a person at a given age? A. Yes, sir. I have done it many times.

Q. If you were then given an experience record, a universal experience record with respect to the United States dealing with the number of deaths, dealing with

the number of births, dealing with the number of births to married women throughout the United States, even though there was no existing table that gave you a

[Tr. 97]

mathematical figure, from that table could any actuary after sufficient study and work determine the probability of a woman of a given age having lawful issue? A. Yes, sir, could.

Q. Is there any basic difference actuarially between the first computation which I spoke of and the second computation? That is between a mortality and a natality table, if you please? A. Basically, no. That is the methods and techniques are the same.

Q. Do you know of any proceeding in which a remarriage table has been used? A. Yes, sir, I do.

Q. In what connection was that? A. In the Maresi case, which I do not know all the details, but I do know the probability of remarriage was recognized by the courts and the American Experience Table had been used as the basis.

Q. You were familiar with what table of remarriage was used in that case, and what table was that? A. The American Remarriage Table.

Q. Is that the same table you used in your computations? A. It is.

Q. In your basic computations you relied upon (1) the mortality table adopted by the Commissioner of In-

[Tr. 98]

ternal Revenue in his estate tax regulations and, secondly, the American Remarriage Table which was adopted by the Court in the Maresi case? A. Yes, sir.

Q. The third table and the third contingency which you then added in was derived from a table which you yourself prepared but based on the records and the pub-

lished tables from the United States Bureau of the Census? A. Yes, sir.

MR. GREENBAUM: No further questions.

* * * * * * * * *

MR. CHARSHEE: Yes, that is all.

THE COURT: Let me ask a question and see if I understand it.

The first computations that you have made would be based on the American Mortality Table, and you would reach a figure that would be the valuation if there were nothing else to reduce it. But after you had arrived at that figure, then you do reduce it by these other second and third contingencies, do you? You subtract from that valuation the subtraction that would have to be made on account of the second and third contin-

[Tr. 99]

gencies, is that the way you arrived at it?

THE WITNESS: Well, that is the effect. That is not the exact method or the technique. The method is to prepare entirely new tables where the number of survivors and deaths are broken into the various groups.

THE COURT: In other words, if you did not have the contingencies there would not be any difficulty in figuring the valuation, I suppose, based on the probability of her death. If you did not have to use the contingencies you would not have any computations?

THE WITNESS: Yes. But in effect, rather than getting a result based on mortality alone and then making a subtraction, it was necessary to recast the combined experience mortality table in the three subdivisions according to marital status.

THE COURT: All these have been explained or covered in these letters and statements that have been introduced?

MR. GREENBAUM: May I just say that the memorandum that was prepared by Mr. Silverman was an attempt to explain the basic calculations in perhaps simpler language than in the original letters.

THE COURT: You are through with Mr. Silverman?

MR. GREENBAUM: No further questions.

THE COURT: All right, sir.

(Witness excused.)

[Tr. 102]

* * * * * * * * *

Whereupon,

Richard Fondiller,

[called on behalf of the taxpayer] testified as follows:

Direct Examination

By Mr. Greenbaum:

[Tr. 103]

Q. Please state your name. A. Richard Fondiller.

Q. What is your occupation, Mr. Fondiller? A. Consulting actuary.

Q. Would you please state your educational and professional background, Mr. Fondiller? A. Graduated from the College of the City of New York with a bachelor degree; gradnated from the Columbia University Law School with law degree; received a degree of Master of Arts from Columbia University.

Admitted to the Bar many years ago. And then in respect to experience and qualifications, I am a Fellow of the Society of Actuaries for many years; Fellow of the Academy Actuarial Society, Fellow of the Institute of—American Institute of Insurance, et cetera.

I have been connected in actuarial and executive capacities with various insurance companies, and I have been a consulting actuary for the last 29 years.

Q. In connection with your professional experience, Mr. Fondiller, have you ever acted in an actuarial capacity on behalf of any of the insurance departments of any states in the United States? A. Yes. Over long experience, computed tables of pensions for widows and children for the State of New York, calculated premium rates for the State of Ohio, represented the

[Tr. 104]

State of Michigan in certain litgation involving insurance companies, done work for the State of Colorado in actuarial capacities, and made premium rates of various kinds for hospitalization, accident, health, life insurance, for numerous life insurance companies, casualty insurance companies, and so forth.

Q. Have you heard the testimony of Mr. David Silverman in this case? A. Yes.

Q. Have you personally prepared any tables of a comparable nature to those described by Mr. Silverman? A. Way back in 1914, '15, while I was the Assistant Actuary of the New York Workmen's Compensation Commission we—under my personal supervision and under the general supervision of the actuary—tables involving mortaiity and remarriage were calculated for the use of the Workmen's Compensation Commission while I was in their employ.

Q. Mr. Fondiller, were you asked to examine the work sheets and actuarial computations prepared by Mr. David Silverman to which we have already referred? Were you asked those computations and to check upon their actuarial validity? A. Yes.

Q. And you have made such an examination? A. I have made such an examination under general supervision of our staff. I have had the figures referred to

[Tr. 105]

me for review.

Q. In your professional opinion, Mr. Fondiller, are the calculations and the results obtained by Mr. Silverman in accordance with known established, recognized actuarial principles? A. Yes, they are.

Q. Mr. Fondiller, if you had been asked to make the same computations, would your methodology, your actuarial technique, have been any different than those employed by Mr. Silverman in making his computations? A. No.

Q. In your opinion, Mr. Fondiller, would any recognized and reputable actuary called upon to make the same computations have used any different techniques and methodology than that employed by Mr. Silverman? A. No, sir.

Q. I hand you this paper. Would you please identify it? A. This is a certificate from me dated November 14, 1951 certifying to the fact that the calculations of Wolfe, Corcoran and Linder in their letter of September 20, 1948, and their letter of January 27, 1950, were done in accordance with actuarial procedures.

MR. CHARSHEE: No objection.

MR. GREENBAUM: Petitioner offers the letter certificate of Mr. Richard Fondiller dated November 14, 1951,

[Tr. 106]

in evidence as Petitioner's Exhibit No. 7.

THE COURT: Be received in evidence as Petitioner's Exhibit No. 7.

(Petitioner's Exhibit No. 7 was received in evidence.)

By Mr. Greenbaum:

Q. Are you familiar with the American Remarriage Table? A. Yes.

Q. Are you familiar with the fact that that table was used as a basis for computation in the Estate of Maresi,

a case tried in the Tax Court of the United States? A. I am familiar with that.

Q. In your opinion, Mr. Fondiller, is the table used by Mr. Silverman with respect to the probability of issue of a white female, age 27, more reliable or less reliable than the computations of the results obtained in the American Remarriage Table? A. Why, they are more reliable for the reason that in actuarial science what we deal with is the number of years of exposure to death, accident, to remarriage, birth. The number of years of exposure in the American Remarriage Table are somewhat less than 100,000 years; on the other hand, in Mr. Silverman's calculation dealing with white, unmarried females in the entire United States there are quite a few million years of exposure.

[Tr. 107]

Q. In your opinion, is the method of securing data relied upon by the Bureau of the Census a reliable method of securing basic actuarial data? A. I would regard it as being sound for the reason that there are so many millions of lives involved and the probability of errors either one way or the other way are neutralized over such a very large exposure of lives.

Q. In connection with the American Remarriage Table, could you state the basic experience record from which that table was derived? A. In these United States there are men killed in industry who leave widows. These widows are entitled to life pensions as long as they remain unmarried. As soon as they remarry their pensions cease. And a committee of the Casualty Actuarial Society made an investigation as to what happened to these widows, namely did they remarry or did they not, and secured the experience from all the insurance companies and from the various workmen's compensation boards in the United States, and

developed therefrom a table showing the rate of remarriage, just as we have in life insurance the table of mortality.

Q. Was the American Remarriage Table originally published in the proceedings of the Casualty Actuarial Society? A. Yes.

Q. Are you officially affiliated with the Casualty Ac-

[Tr. 108]

tuarial Society? A. Yes. I have been the secretary of the Society and still am, and have been secretary of the Society for 33 years.

Q. Are you familiar with the manner in which papers published in the annual proceedings are determined? A. Yes.

Q. In connection with the American Remarriage Table published in those proceedings, did the Casualty Actuarial Society make any reservation or any comments with respect to the validity of the table of which we are speaking. A. No, sir, they did not.

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Q. In your opinion, Mr. Fondiller, would the Casualty Actuarial Society publish a table prepared in the manner in which Mr. Silverman has prepared an isolated table solely with respect to the age 27 but if that were expanded to all ages would the Casualty Actuarial

[Tr. 109]

Society publish such a table? A. Yes.

Q. In your opinion, would the Casualty Actuarial Society have any reservation with respect to the validity of such a table if it were published? A. If the table were calculated on the basis comparable to that of the American Remarriage Table or any mortality table with sufficient data, the table would be published and included in the proceedings of the Society.

Q. Are you familiar with the discussion in the Maresi case dealing with prior remarriage tables other than the American Remarriage Table that was used in that case? A. Yes.

Q. What was the exposure or the experience record used as the basis of these other remarriage tables?

* * * * * * * * *

A. Well, there were other remarriage tables that had been employed before the American Remarriage Table. For example, the Dutch Remarriage Table had been used for many years in the United States for the reason that there had been no American experience com-

[Tr. 110]

piled. Now, that the American Remarriage Table has been compiled, that is the standard in the United States. In other words, for lack of any United States experience we used the experience of the Dutch Royal Insurance Institute of Holland.

Q. In your opinion, would a table based upon the experience record of 1500 members, male members of the Scotch peerage be an adequate basis for a remarriage table or a table, or a table dealing with probability of issue? A. Not in my opinion.

Q. Are you familiar with the general literature in the actuarial field? A. Yes.

Q. Do you know of your own personal knowledge whether there are any tables dealing with remarriage and the probability of issue in any countries outside the United States? A. Yes.

Q. Would you please tell us about these other tables outside the United States?

MR. CHARSHEE: I think the tables themselves are the best evidence.

THE WITNESS: I have them here, counsel. I have personal knowledge of this because it is published in the

proceedings of the Casualty Actuarial Society, which is the Society of which I have been secretary for many years. And the background is this official table of the

[Tr. 111]

Minister of Labor of France. These are the original tables and the text is printed in French, entitled "Document No. 10 of the Minister of Labor, Tables de Nuptialite et Natalite," tables of marriage and birth. And on the title page it states that the Minister of Labor had to issue these official tables for the reason that a law had been passed in 1921 providing for insurance companies insuring these two forms of insurance.

Then in 1932 a paper was presented to the Casualty Actuarial Society and accepted and printed in the proceedings of the Society, volume 18, from pages 405 to 440. This paper is entitled "Marriage and Birth Insurance in France" by Henry Balu, member of the French Institute of Actuaries and the actuary for Europe of the Equitable Life Assurance Society of the United States.

And in this paper he describes the fact that there are three insurance companies writing this form of insurance. And he gives various mathematical formula and tables, and he also has in there on page 437 a table entitled "table of reproductive rates." In other words, it is a birth rate just like we were talking of the rate of mortality. This is the rate of birth at certain ages based upon the French census.

Q. Mr. Fondiller, are you familiar with the actuarial methods and the actuarial techniques that were employed as the basis for this French table to which you have been referring? A. Yes.

[Tr. 112]

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Q. From the standpoint of the basic exposure or the experience from which these two tables have been derived, the French table and Mr. Silverman's single table, in your opinion, which is the more reliable? A. Well, I would regard the French table as being reliable because it does cover the exposure of many million females. On the other hand, we have to remember that the United States population of unmarried females, the exposure is more than double that of the French table. So that we can certainly say any calculations based upon American experience are really dependable.

[Tr. 113]

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Q. I hand you this document. Would you please identify it? A. This is report No. 10 of the Minister of Labor of France.

Q. Referring to page— A. 25.

Q. —25 of that document, would you please tell us what the probability of a woman, age 27, having issue in accordance with that table—

MR. CHARSHEE: I thought that was in French. Is he interpreting this?

THE WITNESS: The figures are in English.

[Tr. 114]

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MR. GREENBAUM: If your Honor please, I would like to call attention to one particular single item in this entire table, rather than—

THE COURT: He may. He may.

THE WITNESS: The figure for age 27 females is .2088 which means that in a single year out of 1,000 females, married females, there will be 208 births out of each 1,000.

MR. GREENBAUM: The petitioner offers the French tables in evidence as Petitioner's Exhibit No. 8.

MR. CARSHEE: I have no objection.

THE COURT: Be received as Petitioner's Exhibit No. 8.

(Petitioner's Exhibit No. 8 was received in evidence.)

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THE COURT: Is it necessary to put all the tables in or just some specific table?

MR. GREENBAUM: I would just introduce page 25, if

[Tr. 115]

that is satisfactory to the Court and to counsel.

THE WITNESS: And the title page.

MR. CHARSHEE: That is satisfactory. And showing the year.

THE COURT: Yes. And page 25.

MR. GREENBAUM: The title page has the year.

By Mr. Greenbaum:

Q. Mr. Fondiller, if an insurance company in the United States were to write insurance similar to that in vogue in France, and if such a company were to come to you to prepare a table to be used as the basis for their business, would you use the same method employed by the French table and Mr. Silverman's table in establishing such a table?

* * * * * * * * *

THE WITNESS: Yes.

THE COURT: You mean you would use the same method?

THE WITNESS: I would.

[Tr. 116]

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By Mr. Greenbaum:

Q. Are you familiar with the tables that are prepared for use by insurance companies with respect to life insurance? A. Yes, I am.

Q. Are you also familiar with the tables used by insurance companies with respect to what is commonly known as double indemnity policies or policies in which payment of insurance proceeds is made for death by accident? A. Yes.

Q. In your opinion, from an actuarial standpoint is there any difference between the valuation used for life insurance or the valuation used for accident insurance? A. Well, in a life insurance policy which is payable at death, there we figure the rate of mortality each year, as we all know every person must die, so that the

[Tr. 117]

amount of insurance involved must be paid at death. However, when it comes to double indemnity, tables have been developed showing the probability of death by accident at all ages. Some will die by accident and some will not. And it is this probability that is calculated to be the basis for calculating a premium rate to pay in the event of death by accident.

Mr. Greenbaum: No further questions by the petitioner.

Cross-Examination

By Mr. Charshee:

Q. Did you hear my questions that I asked Mr. Silverman on cross-examination, and did you also hear his answers? A. Yes, sir.

Q. Would your answers be the same? A. Yes, sir.

Q. I just want to ask you a couple of questions now about this French table that you say was prepared there. What year was that prepared? A. The French

law was passed in 1921 and the table was prepared—the regulations were issued in the year 1921.

Q. What method was used by the French authorities in compiling that table? A. They used the census returns for the years 1901, 1905—1901, 1906, and 1911, because a census is taken in France every five years.

[Tr. 118]

Q. Do I understand, then, that they used the same method in arriving at the table covering the contingency of having a child as Mr. Silverman did? A. Yes, sir.

Q. What were those French tables used for—for what purpose? A. They were used in order to—for the Minister of Labor to issue regulations to insurance companies, because when insurance companies wanted to write this form of insurance the French Government wanted to know that it, the companies, would remain solvent and that they would charge adequate premium rates for birth insurance and marriage insurance, and hence these regulations.

MR. CHARSHEE: That is all.

MR. GREENBAUM: One question.

Redirect Examination

By Mr. Greenbaum:

Q. The tables you have been referring to, when were they printed in the proceedings of the Casualty Actuarial Society? A. They were printed on May 20, 1932.

MR. GREENBAUM: No further questions.

* * * * * * * * *

[Tr. 119]

* * * * * * * * *

MR. CHARSHEE: No further questions.

THE COURT: Is that all, Mr. Greenbaum?

MR. GREENBAUM: Yes, your Honor, that is all for this witness.

(Witness excused.)

[Tr. 124]

Taxpayer's Exhibit 3

September 20, 1948

Greenbaum, Wolff & Ernst
285 Madison Avenue
New York 17, N. Y.

Gentlemen:

Re: Estate of Louis Sternberger, Deceased
Date of Death, June 25, 1947
Westchester County, New York

At your request, we have determined the present value of the charitable remainder under the will of the above deceased at date of death. The data on which we have based our calculations is as follows:

1. Total Gross Value of Estate		$2,406,541.71
Less: Various Expenses	$102,646.37	
Charitable Bequest to Seamans Church Institute	1,000.00	
Bequests to Marion and Robert Gans	2,000.00	
Bequest to Wife (Personal Effects)	1,727.00	106,767.97
Net Balance on which to base Charitable Remainder		$2,299,773.74

2. Under the terms of the will, Eunice E. Sternberger, widow, and Eunice P. Sternberger, daughter, have a joint survivorship life interest in the income of the estate and upon the death of the survivors, the corpus is to be paid to the then living descendants of

Eunice P. Sternberger and if there be no such descendants, one-half of the net income of the trust is to be paid in perpetuity to certain charitable institutions.

3. Eunice E. Sternberger, widow, was born on May 20, 1885 and at the date of testator's death, June 25, 1947, was 62 years old.

4. Eunice P. Sternberger, daughter, was born on March 2, 1920 and at the date of testator's death, June 25, 1947, was 27 years old.

5. Eunice P. Sternberger, daughter, was married January 16, 1942 and divorced March 31, 1944, at which time she was 24 years old. At the date of testator's death and at the present time she has not remarried and

[Tr. 125]

has had no issue.

6. The mortality table used in determining the charitable remainder was the Combined Experience Table of Mortality.

7. The remarriage table used in determining the charitable remainder was the American Remarriage Table as set forth in the proceedings of the Casualty Actuarial Society, Volume XIX, page 332.

8. With respect to the probability of issue, we found no maternity rates in publications which were appropriate for use in these calculations. We, therefore, derived maternity rates from the data contained in the reports of the Bureau of the Census which reflect the probability that a childless white married female will become a mother. The basic data used in the compilation of such rates was taken from the reports of the Bureau of the Census showing the number of white females in 1940 according to the age and the number of births during 1940 according to the age of the

mother. From this data we derived maternity rates according to the age of the mother in such manner that only the first birth was considered, that is, our maternity rates represent the probability that a married female will become a mother by the birth of her first child. It is worthy of note that our calculations gave no consideration to the probability of death of the issue, that is, it has been assumed that if Eunice P. Sternberger married and became the mother of a child, the child would survive her; also in our calculations no consideration was given to the possibility of Blanche R. Wolff, niece, William F. Wolff, Jr. and James A. Wolff, grand nephews of the deceased, predeceasing the widow and daughter and William F. Wolff, Jr. and James A. Wolff leaving no issue, in which event all of the corpus instead of one-half therof would revert to charity. These facts result in the computation understating the value of the remainder to charity.

9. In all of the calculations we have assumed an interest rate of 4%.

In accordance with the foregoing, we have determined that the value of the charitable remainder is $.24064 per $1 represented in the one-half of the estate which may go to charity.

[Tr. 126]

Copies of our work sheets used in making the calculations are attached.

Yours very truly,

WOLFF, COCHRAN AND LINDER

[Attached to the taxpayer's Exhibit 3 are three work sheets, which are not printed here.]

[Tr. 130]

Taxpayer's Exhibit 4

January 27, 1950

Greenbaum, Wolff & Ernst
285 Madison Avenue
New York 17, N. Y.

Gentlemen:

Re: Estate of Louis Sternberger, Deceased
Date of Death, June 25, 1947

On September 20, 1948 we submitted a computation of the value of a remainder interest under the will of the above deceased at date of death. Such value was contingent upon whether Eunice P. Sternberger, daughter, would have issue.

We have recomputed the value of the remainder interest based on exactly the same facts as stated in our letter of September 20, 1948, except that the value of the remainder has been made contingent upon whether Eunice P. Sternberger marries, without regard to issue. Briefly stated, our calculation represents the value at date of death of $1 payable upon the death of both the widow, age 62, and the daughter, age 27, provided that the daughter, who had been divorced three years previously, does not remarry.

In making this calculation we have used the Combined Experience Table of Mortality with 4% interest and the American Remarriage Table.

The value per $1 of remainder is $.18384.

We have previously sent you a photostatic copy of a work sheet showing the application of the American Remarriage rates to the number living according to the Combined Experience Table. We are attaching hereto a photostatic copy of our work sheet which shows the calculation of the value, $.18384, using the numbers

representing married and unmarried lives previously furnished you.

Yours very truly,

WOLFE, CORCORAN AND LINDER
By: DAVID SILVERMAN
David Silverman

[Attached to the taxpayer's Exhibit 4 is a work sheet, which is not printed here.]

[Tr. 132]

Taxpayer's Exhibit 5

MEMORANDUM

In Explanation of the Actuarial Tables used in Computations for the Estate of Louis Sternberger

Prepared by
David Silverman, F.C.A.S.,
of Wolfe, Corcoran and Linder
Consulting Actuaries
November 13, 1951

[Tr. 133]

The Problem

The problem here at hand is to determine the present value of a charitable remainder which is to take, if at all, upon the second death of two women, ages 27 and 62, provided the former, who is unmarried but divorced, shall die childless. The contingencies to be considered are, therefore, death, remarriage, birth, and the rate of interest. A brief discussion and explanation of each of these contingencies follows.

Death Rates

The death rate at any age may be defined as the probability that a person of that age will die within one

year. The death rates used for the present problem are those of the Combined Experience Mortality Table, which is the table prescribed by the Bureau of Internal Revenue for use in such cases.

Remarriage Rates

A remarriage rate is the probability that a person previously married will remarry within one year. It is known that remarriage rates for women depend not only on age, but also on the time elapsed since the previous marriage. Under the present problem, it has been assumed that the charitable interest will take if the younger woman does not remarry.

Remarriage rate studies have not been as numerous as studies of death rates. The outstanding study based on American experience was that conducted by a Committee of the Casualty Actuarial Society and published as the American Remarriage Table in Volume 19, pp. 279-349, of that Society's Proceedings, in 1933. The following excerpt from the Committee's report gives some background of the table.

[Tr. 134]

> "*Source, Volume and Compilation of Data*
>
> The basic data were obtained from individual case reports submitted by insurance carriers, both private and state funds, in compliance with a call issued by the Committee through the National Council. The reports were limited to widows who, through the death of their husbands, became beneficiaries under workmen's compensation laws in states where their status as beneficiaries changes on remarriage. The reports filed covered the experience for policy years 1911 to 1929 inclusive."

On page 298, the following comment appears:

> "The American Remarriage Table based upon an adequate volume of American experience and constructed as outlined in the preceding paragraphs may with reasonable safety be adopted for countrywide use."

In the computations, the remarriage rates of the American Remarriage Table were combined with the death rates of the Combined Experience Mortality Table in order to determine the survivors and the deaths according to marital status. The results still represent the Combined Experience Mortality Table, the only additional feature being that survivors and deaths were divided into two categories, the married and the unmarried, as is illustrated by the following table:

	Number of Survivors out of 88,434 Unmarried Women at Age 27			
	Combined Experience	Combined Experience Mortality Table, Including Remarriage Rates		
Age	Mortality Table	Unmarried	Married	Total
30	86,292	71,669	14,623	86,292
40	78,653	50,307	28,346	78,653
50	69,517	39,683	29,834	69,517

Maternity Rates

From the conditions of the present problem, the charitable interest may take, even if the woman aged 27 does remarry, provided that no issue results from the marriage. It is necessary, therefore, to consider birth rates, that is, the probability of a married woman giving birth to a child.

Unlike death rates and remarriage rates, maternity rates were not available in such explicit form as to be

[Tr. 135]

directly adaptable to the present problem. However, the United States Bureau of the Census has published very voluminous vital statistics and from this source maternity rates were especially computed for use in this specific case.

From Table 3 on page 89 of the Vital Statistics of the U.S., 1940, Part II, headed "Live Births by Age of Mother, Race and Number of Child: United States and Each State, 1940", the number of white, first born, children born throughout the United States during 1940, was determined according to the age of the mother. The only adjustment necessary was to exclude the 65,103 white births in Massachusetts because birth certificates in that state do not require the number of the child in order of birth, and so it could not be determined how many were first children. The data used, therefore, covers 766,674 first births in 47 states plus the District of Columbia.

It was necessary next to determine, by age of mother, and for the same geographical area, the number of married but childless women to serve as the proper exposures for the required maternity rates. The 1940 census release of the Bureau of the Census, Population Division, Series P-10, No. 6, furnished the total white female population in 1940, distributed by age, and also the number and proportion that were married. Also, from the population Division's Second Series, the number of white females in Massachusetts alone in 1940 was available, so that the white female married population of the United States, excluding Massachusetts, was determined.

From Table 9, page 119, of the 1940 Population Statistics, headed "Families by Race and Nativity of Head and Tenure, by Marital Status, Age, and Sex of Head, and Number of Children under 18 years Old,

for the United States, 1940", the total number of families and also the number and proportion of fam-

[Tr. 136]

ilies with no children under 18 was obtained. Study and adjustment of this data permitted determination of a close estimate of the percentages of all families that are childless, such percentages being available for the various ages of the wife. The application of these percentages to the white married female population, excluding Massachusetts, determined the number of white married females that were childless. The ratios of the number of first children born to the numbers of these females, by age, gave the required maternity rates.

As mentioned when remarriage rates were discussed, the introduction of maternity rates as well as remarriage rates into the Combined Experience Mortality Table in no wise alters the fact that the results still represent that Mortality Table. The only additional feature is that survivors and deaths are divided into three categories, as is illustrated by the following table:

Number of Survivors
out of 88,434 Unmarried Women at Age 27

	Combined Experience Mortality	Combined Experience Mortality Table, Including Remarriage and Maternity Rates			
			Married but		
Age	Table	Unmarried	Childless	Mothers	Total
30	86,292	71,669	11,863	2,760	86,292
40	78,653	50,307	17,733	10,613	78,653
50	69,517	39,683	19,884	9,950	69,517

Interest Rate

The computation of the present value of a future payment necessarily involves the element of interest. The Bureau of Internal Revenue has prescribed a rate

of 4% per annum compounded annually, and this rate has been used in the computations.

Tables Prepared for Computations

Three tables, copies of which are attached hereto, have been prepared and designated as Exhibits I, I-A, and II. These tables are intended to reflect portions

[Tr. 137]

of the Combined Experience Mortality Table according to marital and maternal status.

In Exhibit I are shown the remarriage and death rates, numbers of survivors by marital status, and yearly decrements, by mode of exit, from the original group of 88,434 unmarried females. Figures are shown from ages 27 through 54, the latter age representing the child bearing age limit according to the statistics used for this purpose. Some figures shown for isolated higher ages were needed for purposes of computation.

Exhibit I-A is merely an extension of Exhibit I, carrying the figures down through age 78, the maximum age of remarriage according to the American Remarriage Table. These figures were needed for certain other computations, and the values at the two isolated advanced ages were similarly required.

Exhibit II breaks down the number of married females emerging in Exhibit I, according to whether they are childless or mothers at the various ages. The maternity rates used and the numbers of survivors are shown, and the yearly decrements by mode of exit reflect the distinction made between mothers and other married females.

It is worthy of note that none of the tables attached or the computations based thereon consider the longevity of a child. The assumption made is that if the

woman aged 27 becomes a mother, then her first child will survive her.

[Attached to the taxpayers Exhibit 5 are the three tables therein referred to as Exhibits I, I-A, and II, which are not printed here]

[Tr. 141]

Taxpayer's Exhibit 6

Greenbaum, Wolff & Ernst — November 1, 1949
285 Madison Avenue
New York 17, N.Y.
Attention: Mr. William F. Wolff

Gentlemen:

Re: Estate of Louis Sternberger, Deceased

In connection with the value of the charitable remainder under the will of the above named deceased, we are submitting herewith certain additional facts which supplement our letter of September 20, 1948. The additional information relates to the problem and to the effect upon the remainder value of the contingency of illegitimate issue.

While the computations outlined in our letter of September 20, 1948 did not specifically cover this contingency, nevertheless, the methods employed did give some weight to the probability that a woman might give birth to an illegitimate child. In paragraph 8 we stated that the basic data used in the compilation of maternity rates was taken from the Bureau of the Census reports showing the number of births during 1940 according to the age of the mother. The number used covered all births whether or not legitimate, so that the calculation of the maternity rates automatically included some provision for illegitimate children. However, it is true that this number of births was then re-

lated to the number of married women, the net effect being that our report of September 20, 1948 gave only partial effect to the contingency under consideration.

We have been able to secure some additional data with respect to illegitimate births which, for this purpose, may be considered to be reliable. The 1946 report on vital statistics published by the Federal Security Agency of the United States shows the following figures which represent the number of illegitimate children born to white mothers out of each 1,000 births.

Year	Number
1940	19.4
1941	19.0
1942	17.0
1943	16.3
1944	19.6
1945	22.8
1946	20.3

Since the former calculations were based primarily on the figures from the 1940 census, we have adopted the 19.4 per 1,000 proportion of illegitimate births in order to be consistent. Actually, the figure for this year is only slightly different from the average for the seven year period.

This proportion of 19.4 illegitimate births per 1,000 was used to adjust our former calculations which resulted in a value of the charitable remainder of $.24994 per $1 represented in the one-half of the estate which may go to charity. In effect, we have made an overall adjustment by subtracting 1.94% from the number of births which were related to married women, and then by applying 1.94% of the number born to unmarried women in the corresponding age group, to secure an overall rate of illegitimate birth. These two rates, added together, enabled us to adjust the value previously reported to you.

The net result is that the increased probability of issue reduces the value per $1 of remainder to charity from .24094 to .24058. The reduction in value is only about .2%. While this may appear to be a rather small reduction, it should be born in mind that our original calculation did make partial provision for illegitimate births and this reduction is intended only to provide for the additional probability of issue not previously accounted for. It is our opinion that the figure of .24058 does make full provision for the probability of issue, whether or not legitimate.

Yours very truly,

WOLFE, CORCORAN & LINDER

[Tr. 143]

Taxpayer's Exhibit 7

November 14, 1951

Greenbaum, Wolff & Ernst
285 Madison Avenue
New York 17, New York

Gentlemen:

Re: Estate of Louis Sternberger, Deceased
Date of Death June 25, 1947

We have reviewed the calculation of the value of the charitable remainder by Wolfe, Corcoran and Linder in accordance with the assumptions stated in their letter of September 20, 1948.

We find that such value was calculated in accordance with standard actuarial procedure.

We have also reviewed the calculation of the value by Wolfe, Corcoran and Linder in accordance with the assumptions stated in their letter of January 27, 1950 and

find that such value also was calculated in accordance with standard actuarial procedure.

Sincerely yours,

RICHARD FONDILLER
Fellow of Society of Actuaries
Fellow of Casualty Actuarial Society

RF.ca

[Tr. 144]

Taxpayer's Exhibit 8

Recueil de Documents
Relatifs
Aux Assurances Sur La Vie
Réunis
Par le Ministère du Travail
(Contrôle des assurances privées)

No. 10

Tables de Nuptialité et de Natalité
D'Après
Les Bases Fixées Par le Décret du 22 Juin 1921,
Rendu en Exécution de L'Article 2 de la Loi du
26 Mai 1921,
Relative à la Surveillance et au Contrôle
Des Entreprises D'Assurance-Nuptialité et
D'Assurance-Natalité
[Medalion]
Paris

Imprimerie Nationale

1922

[Tr. 145]

Table V

Table of Reproductive Rates

Father's age	Males	Mother's age	Females
15 years	"	15 years	0.4092
16 "	"	16 "	0.3061
17 "	"	17 "	0.2731
18 "	0.4471	18 "	0.2633
19 "	0.3292	19 "	0.2641
20 "	0.2932	20 "	0.2690
21 "	0.2843	21 "	0.2736
22 "	0.2872	22 "	0.2746
23 "	0.2946	23 "	0.2700
24 "	0.3013	24 "	0.2565
25 "	0.3031	25 "	0.2445
26 "	0.2977	26 "	0.2270
27 "	0.2855	27 "	0.2088
28 "	0.2677	28 "	0.1916
29 "	0.2472	29 "	0.1753
30 "	0.2263	30 "	0.1620
31 "	0.2065	31 "	0.1498
32 "	0.1885	32 "	0.1389
33 "	0.1727	33 "	0.1280
34 "	0.1588	34 "	0.1192
35 "	0.1464	35 "	0.1095
36 "	0.1353	36 "	0.0993
37 "	0.1250	37 "	0.0886
38 "	0.1151	38 "	0.0774
39 "	0.1055	39 "	0.0661
40 "	0.0958	40 "	0.0554
41 "	0.0861	41 "	0.0455
42 "	0.0765	42 "	0.0368
43 "	0.0672	43 "	0.0249
44 "	0.0584	44 "	0.0164
45 "	0.0503	45 "	0.0107

Father's age	Males	Mother's age	Females
46 "	0,0430	46 "	0,0071
47 "	0,0365	47 "	0,0048
48 "	0,0306	48 "	0,0033
49 "	0,0263	49 "	0,0025
50 "	0,0223	50 "	0,0017

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. —

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

v.

ESTATE OF LOUIS STERNBERGER, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, EXECUTOR, RESPONDENT.

On Petition for Review of the Decision of the Tax Court of the United States

RESPONDENT'S APPENDIX

GREENBAUM, WOLFF, & ERNST,
Attorneys for Respondent.

EDWARD S. GREENBAUM,
WILLIAM F. WOLFF, JR.,
MAURICE C. GREENBAUM,
CHARLES E. HEMING,
Of Counsel.

Filed October 2, 1953, A. M. BELL, *Clerk*, United States Court of Appeals, Second Circuit.

APPENDIX

EXHIBIT 2

* * * * *

FIRST: I hereby amend and modify Article "SEVENTH" of my aforesaid last Will and Testament so that the said Article "SEVENTH" will now read as follows:

"Seventh: I give, devise and bequeath all the rest, residue and remainder of my estate, real, personal and mixed, of whatever kind and nature and wherever situated, of which I shall die seized or possessed or over which I shall have any power of disposition of appointment, or in which I shall have any interest, to my Trustee to hold the same in trust during the period of the joint lives of my wife, EUNICE E. STERNBERGER and our daughter EUNICE P. STERNBERGER, and the life of the survivor of them, to keep the same invested and to do and perform the following acts and things:

First: as to Income: To collect the income therefrom and after paying all proper charges to pay the net annual income as follows:

a) The Trustee shall pay to my wife EUNICE E. STERNBERGER, fifty per cent (50%) of such net income during the

life of our daughter EUNICE P. STERNBERGER and in the event of the demise of ou. daughter EUNICE P. STERNBERGER thereafter such sums as hereinafter provided. Said income will be paid during said EUNICE E. STERNBERGER's life in monthly installments.

b) The Trustee shall pay to my daughter EUNICE P. STERNBERGER, the remaining fifty per cent (50%) of such net income in monthly installments during the life of my wife EUNICE E. STERNBERGER and in the event of the demise of my said wife, shall pay to said EUNICE P. STERNBERGER the entire net income of the trust in monthly installments during her life.

c) If my daughter EUNICE P. STERNBERGER shall die before EUNICE E. STERNBERGER, then the Trustee shall pay the entire net income of the trust as follows:

1. Sixty percent (60%) thereof to EUNICE E. STERNBERGER during her life.

2. Forty percent (40%) thereof to EUNICE P. STERNBERGER's descendants in equal shares per stirpes as that class may from time to time be constituted, and at such time as no person in such class shall then survive then to pay said income to my niece BLANCHE R. WOLFF and my grandnephews WILLIAM F. WOLFF, JR., and JAMES A. WOLFF or such of them as may be surviving for the time being in equal shares except that if either WILLIAM F. WOLFF, JR. or JAMES A. WOLFF shall die his descendants as the class may from time to time be constituted shall receive the income said WILLIAM F. WOLFF, JR. or JAMES A. WOLFF would have been entitled to, if living, in equal shares per stirpes. At such time as there be none of said persons surviving, the trustee shall pay such income to the charities entitled to receive income under the following paragraph numbered "Second".

Second: as to Principal: Upon the death of the survivor of EUNICE E. STERNBERGER and EUNICE P. STERNBERGER, the Trustee shall transfer, assign and set over the net principal of the Trust as the same shall then consist to the descendants then living of said EUNICE P. STERNBERGER in equal shares *per stirpes*, and if there be no such descendants living upon the death of the survivor, then the Trustee shall transfer, assign and set over one half (½) the net principal of the trust to BLANCHE R. WOLFF, WILLIAM F. WOLFF, JR., and JAMES A. WOLFF or such of them as may be then surviving in equal shares except that if either JAMES A. WOLFF or WILLIAM F. WOLFF, JR., is then deceased his descendants shall receive the share the said JAMES A. WOLFF or WILLIAM F. WOLFF, JR., would have been entitled to, if living, in equal shares per stirpes; and said Trustee shall continue to hold the other one half (½) of the net principal of trust or the whole of said principal if none of the persons above mentioned

shall then survive, in trust and shall pay over the net annual income thereof in perpetuity as follows:

a) One-quarter (1/4) thereof to NATIONAL JEWISH HOSPITAL AT DENVER.

b) One-quarter (1/4) thereof to FEDERATION FOR THE SUPPORT OF JEWISH PHILANTHROPIC SOCIETIES OF NEW YORK CITY.

c) One-quarter (1/4) thereof to THE PRESBYTERIAN HOSPITAL IN THE CITY OF NEW YORK.

d) One-quarter (1/4) thereof to one or more organizations for the welfare and betterment of the Negro race selected by the Trustee;

provided that if any of the foregoing organizations shall have ceased to exist, or if an organization named in (c) or (d) shall cease to be nonsectarian (determined as provided below) in the conduct of its affairs, the Trustee shall pay over the share of income to which such organization would otherwise have been entitled to a generally similar nonsectarian charity selected by it. The Trustee for the purpose of determining nonsectarianism under this paragraph shall be entitled to rely upon an affidavit affirming the fact thereof made by an officer of the organization in question, unless affirmative evidence of sectarianism shall be brought to its attention, in which event it may request instructions of any court having jurisdiction."

OFFICIAL REPORT OF PROCEEDINGS BEFORE THE TAX COURT OF THE UNITED STATES

[Caption]

Hearing at New York, N. Y.
Date: November 15, 1951.
[Tr. 79]

* * * * *

Mr. CHARSHEE: Your Honor, with respect to the first issue, the Commissioner has relied upon *Humes versus United States*, 276 U. S. 487. In the *Humes* case, there was a need, a young girl of 15 years of age, and if she had a child before she was 40 the charitable contributions would have been defeated. Now, with respect to whether or not that young lady would have a child prior to the time she was 40 the Supreme Court made the following statement:

"Neither the taxpayer nor revenue officer, even if equipped with all the aid which the actuarial art can supply, could do more than guess at the value of this contingency."

In other words, in that case, there was an actuarial table submitted to the Supreme Court, and Justice Brandeis, I think it was,

said that it lent no value to the Court, that it was a mere guess as to whether or not a young woman of that age would have a child prior to the time she was 40. And relying on that language of the Supreme Court, the same situation exists here, and we think it can be nothing more nor less than a guess as to whether or not this young woman of 27 would have a child, and therefere we think no value could be placed upon these contingent remainders.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1953

No. 34

Argued October 15, 1953. Decided November 6, 1953

Docket No. 22701

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ESTATE OF LOUIS STERNBERGER, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, EXECUTOR, RESPONDENT

Before: L. HAND, SWAN and A. N. HAND, *Circuit Judges*

Appeal from a decision of the Tax Court of the United States (18 T. C. 836), BLACK, *Judge*

Melva M. Graney, for the petitioner.
Eduard S. Greenbaum, for the respondent.

PER CURIAM:

The judgment of the Tax Court is affirmed on the authority of *Meierhof* v. *Higgins*, 129 Fed. (2) 1002 (C. A. 2).

[Endorsed:] United States Court of Appeals, Second Circuit. Commissioner of Internal Revenue v. Estate of Louis Sternberger. (34). Judgment. United States Court of Appeals, Second Circuit. Filed November 6, 1954[3]. Alexander M. Bell, Clerk.

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 6th day of November one thousand nine hundred and fifty-three.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Augustus N. Hand, *Circuit Judges*

Commissioner of Internal Revenue, petitioner

v.

Estate of Louis Sternberger & Chase National Bank, Executor, respondent

Appeal from The Tax Court of the United States

This cause come on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

(S.) Alexander M. Bell,
Clerk.

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK

I, A. Daniel Fusaro, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 71, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Commissioner of Internal Revenue against Estate of Louis Sternberger as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto fixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 12th day of January in the year of our Lord one thousand nine hundred and fifty-four, and of the Independence of the said United States the one hundred and seventy-eighth

[seal.] (S.) A. Daniel Fusaro,
Clerk.

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